



## CLOSED CASE SUMMARY

ISSUED DATE: JUNE 28, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0449

### Allegations of Misconduct & Director’s Findings

#### Named Employee #1

Allegation(s):		Director’s Findings
# 1	15.410 - Domestic Violence Investigation, 15.410-POL-2 Officers Make Arrests with Probable Cause	Not Sustained - Lawful and Proper (Expedited)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained - Lawful and Proper (Expedited)
# 3	5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Lawful and Proper (Expedited)

*This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.*

#### EXECUTIVE SUMMARY:

Named Employee #1 (NE#1) responded to a domestic violence (DV) call. The Complainant alleged he was unlawfully arrested. The Complainant alleged that NE#1 determined he was the aggressor based on the Complainant being a heterosexual white man and the victim being a transgender female.

#### ADMINISTRATIVE NOTE:

This case was approved for Expedited Investigation. That means OPA, with the Office of Inspector General’s agreement, believed it could reach and issue recommended findings based on its intake investigation without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

#### SUMMARY OF INVESTIGATION:

##### **A. OPA Complaint and OPA Complainant Interview**

The Complainant told OPA that NE#1 sided with Community Member #1 (CM#1)—the Complainant’s roommate—despite the Complainant being the person to call the police. The Complainant said CM#1 attacked him for reporting CM#1’s uncleanness to their landlord and that CM#1’s falsely accused the Complainant of being transphobic.

The Complainant believed NE#1 had to make an arrest and chose him because he was a heterosexual white man and CM#1 was transgender.



## **B. Body-Worn Video (BWV)**

OPA reviewed relevant BWV, showing:

NE#1 arrived and contacted CM#1. CM#1 alleged that the Complainant frequently directed transphobic and homophobic slurs at her. CM#1 alleged that the Complainant grabbed and hit her that evening. CM#1 said she then hit the Complainant. CM#1 described it as a “flailing fight.” CM#1 had a large red lump on her forehead and a contusion on her arm.

Witness Employee #1 (WE#1) interviewed the Complainant. The Complainant said CM#1 started the fight by calling him an “asshole.” The Complainant said the dispute stemmed from him telling their landlord that CM#1 left “hash” on their kitchen counter. The Complainant said his glasses were broken during the fight and that he used a Lysol can for protection. Officers located his broken glasses. The Complainant had a minor laceration under his eye and red marks on his face. The Complainant denied starting the fight but admitted to calling CM#1 a “pussy bitch loser” the day before.

Other roommates told WE#1 that the Complainant was the primary aggressor. WE#1 relayed that information to NE#1, “Sounds like everyone has a story about [the Complainant].” NE#1 interviewed those witnesses himself. One resident said the Complainant had “been instigating a lot of things recently.” Another roommate said the Complainant targeted CM#1. Another suggested the Complainant was “homophobic.”

NE#1 said, “Right now, it’s ‘he said, she said,’ but hearing kind of from you guys, there’s a pattern of some sort that I can go off of.” The roommates added that the Complainant had screaming matches with a former roommate.

NE#1 arrested the Complainant, explaining, *“So the reason why I’m making the decision that I am- right now, it’s your story, it’s [CM#1’s] story. You both have injuries; you both have provided a recorded statement of what your recollection of the incident was. I’ve talked to other roommates as well. It sounds like they didn’t hear much about today there. It sounds like it’s a pattern with you becoming upset at other roommates and picking fights, according to them. I can only go [on] what I have heard because everybody that is here today, I’ve met everybody for the first time. That’s why I’m making the decision that I’m making.”*

The Complainant asked NE#1 whether CM#1 was also being arrested. NE#1 said no.

## **C. Incident Report**

OPA reviewed the related incident report, consistent with OPA’s BWV review. NE#1 documented that he arrested the Complainant for violating RCW 9A.36.080 – Hate Crime Offense.

OPA also reviewed Witness Employee #2’s (WE#2)—a detective—follow-up report. WE#2 determined that the charges did not meet the threshold for a felony hate crime due to the lack of witnesses and the underlying conflict over



household issues. WE#2 recommended that the charges against the Complainant be amended to Assault 4 (Domestic Violence). WE#2 did not recommend charges against CM#1.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***15.410 - Domestic Violence Investigation, 15.410-POL-2 Officers Make Arrests with Probable Cause***

The Complainant alleged that NE#1 unlawfully arrested him.

SPD Policy 15.410-POL-2 references RCW 10.31.100 and notes, “When the officer has probable cause to believe that family or household members have assaulted each other, the officer does not have to arrest both persons. The officer will arrest the person whom the officer believes to be the primary physical aggressor.” Further, “...the primary physical aggressor is not always the person who struck first,” so an officer should consider “[t]he history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.” SPD Policy 15.410-POL-2.

NE#1 interviewed the Complainant and CM#1. Both had injuries and accused the other of being the initial aggressor. The Complainant alleged the fight was over him reporting CM#1 to their landlord. CM#1 alleged that the Complainant assaulted her after ongoing harassment, including hate speech. With no objective evidence, NE#1 relied on statements from roommates. NE#1’s investigation concluded that the Complainant had a pattern of instigating conflict and using homophobic language. After he arrested the Complainant, NE#1 explained his rationale. NE#1’s decision was supported by SPD policy, which instructs officers to investigate and consider a subject’s behavioral history.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

The Complainant alleged that NE#1 abused discretion by arresting him instead of CM#1.

As discussed at Named Employee #1 - Allegation #1, NE#1 determined the Complainant and CM#1 were injured and had conflicting accounts. NE#1 interviewed roommates and decided that the Complainant’s conduct was consistent with an ongoing pattern of abuse. The Complainant’s arrest was not discretionary. Instead, it was mandatory per SPD policy and Washington State law.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**



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**Named Employee #1 - Allegation #3**

***5.140-POL-2 Officers Will Not Engage in Bias-Based Policing***

The Complainant alleged that NE#1 arrested him because the Complainant was a white man and CM#1 was a transgender female.

SPD prohibits biased policing, defined as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. That includes different treatments based on the race of the subject. *Id.*

OPA did not observe NE#1 making any decisions based on the Complainant’s race or gender, nor did NE#1 appear to favor CM#1 because of her gender identity. NE#1 investigated the incident as a potential hate crime due to CM#1’s allegation that the Complainant frequently harassed her with homophobic slurs. The Complainant alleged that NE#1 was required to make an arrest, which was true. However, as discussed at Named Employee #1 - Allegation #1, NE#1 considered the totality of the circumstances, which indicated that the Complainant was the aggressor.

Accordingly, OPA recommends this allegation be Not Sustained - Unfounded (Expedited)

Recommended Finding: **Not Sustained - Unfounded (Expedited)**